

Public Ethics Radio

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Episode 19, Stuart Green on Property Law

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MATT PETERSON: This is Public Ethics Radio, I'm Matt Peterson.

A meme about illegal music downloads has going around the Internet for a few years now. It goes something like this: Piracy isn't theft. Theft removes the original. Piracy makes a copy.

Our guest today, Stuart Green, thinks that there's something to the idea that the strict legal definition of theft doesn't really capture what's going on in music piracy and other forms of intellectual property rights infringement. Green thinks that revisions to the law that lumped together many different kinds of theft have resulted in a system that doesn't match people's intuitions about the moral distinctions between kinds of takings of property.

Christian Barry spoke to Stuart Green in Canberra.

CHRISTIAN BARRY: Today we're discussing issues connected to theft, intellectual property, and other themes with Stuart Green from Rutgers Law School. Stuart Green, welcome to Public Ethics Radio.

STUART GREEN: Nice to be here, thanks for having me.

CHRISTIAN BARRY: Stuart, one of the distinctive features of recent developments in technology and other areas seems to be that there are more and varied forms of property, and consequently more and varied forms of what is commonly referred to as "theft."

Now, one of the things that's familiar to anybody who is watching DVDs or using software is that you're presented with warnings, often which try to warn you that you should not be misappropriating these goods and that, if you are to misappropriate these goods, it's tantamount to theft—and equivalent, morally and legally, with stealing other sorts of things.

What is your view about this sort of development and if the law is adequate to the development of these new forms of property?

STUART GREEN: Right, so that's very much the position that the movie and music industry and prosecutorial officials, legislatures, in a lot of the world—particularly in the Western world that produces a lot of the intellectual content, intellectual property, which is so much a part of our economy now—have been pushing: the idea that if you illegally download something from the Internet then that's just as bad, just as blameworthy, just as punishable, as traditional theft of tangible property.

And the question is whether that really makes sense—whether that equation of misappropriation of tangible property with misappropriation of intangible property is a reasonable kind of analogy to make from a legal perspective and from a moral perspective.

So, the problem is that the analogy really begins to break down upon examination. And the traditional notion of theft, the notion that's really has existed since time immemorial, since human beings began to develop the idea of property rights and develop a notion of theft to begin with, or stealing, is that when I take something of yours and appropriate it for my own use, you no longer have it.

And we can think of that as a kind of zero-sum game. What I take is your loss, what I gain is your loss. But that conceptual framework really begins to break down when we look at intangible property, because when I download your intellectual property from your website, or when I appropriate information that belongs to you that you've invested in, when I take it from you in some sense you still have it because it's intangible—I haven't deprived you of you of the use of it, although I have deprived you of the ability to exclude me from its use.

And so the question is: how should we think about misappropriating intellectual and other forms of intangible property, like information?

CHRISTIAN BARRY: So what sort of case is there for treating these two types of issue differently, at least from a moral and legal perspective?

That is, in the sense that when you download something illegally or infringe property rights in some idea or thing, it's true that the person retains it in some sense as an intangible, but surely the value is diminished, first of all. So they can certainly view it as a setback to their interests, or something, which they have some sort of a claim being taken from them.

And secondly, forward lookingly, the argument often is that the dynamic effects of permitting this sort of behavior is very bad, because people will lack the incentives to create things of value and so on and so forth.

STUART GREEN: Right, so I'm not suggesting at all that we shouldn't endow intellectual property and other kinds of intangible property with legal protection. I certainly think we should, and even possibly criminal law in the most serious cases.

But the idea of theft or stealing has always been viewed as the most serious kind of infringement of property rights that one can engage in, and we think of property as a bundle of rights: the right to possession, the right to exclude, the right to use, the right to transfer, the right to destroy even. And theft constitutes the most serious and thoroughgoing deprivation of rights.

So if you steal something from me, you really—I've really got nothing left. I no longer possess the property; I can no longer use it; I can no longer exclude someone. I've been completely—my property right has been completely undermined.

But there are lesser forms of infringement of property rights. We can talk about trespass, or we can talk about unauthorized use, or misappropriations of various sorts. And those are, and can be, serious kinds of property deprivations, but they don't rise to the level of theft. And,

other things being equal, arguably we shouldn't treat a trespass as serious a deprivation of rights as we treat theft.

So the argument and the suggestion isn't that we should, you know, not protect intellectual property, or that people who invest in intellectual creations of various sorts shouldn't be protected, but rather that to apply the most serious criminal penalty that we have in the realm of property crimes is sort of overkill, or a form of overcriminalization.

And moreover it's inconsistent with people's intuitions about what's underlying rights are being violated here. I mean, people just simply don't have, or at least empirical studies suggest that people don't have, the intuitions that unauthorized use of intangible property is as serious as a form of stealing tangible property.

CHRISTIAN BARRY: Right, so what is the connection there between what people tend to think—or if it's the case that as a matter of public opinion people don't take downloading or unauthorized use as being tantamount to the stealing of a bicycle—what significance does that have to what the law should be?

STUART GREEN: Right. So the suggestion isn't simply that we should take a poll and decide what the law should be. Of course not. But the criminal law—all law, but criminal law in particular—is really very much dependent on and tied up with the support of public morality. And so to the extent we're planning to use the most serious sanctions that a civil society has—the possibility of depriving criminal defendants who are convicted of their liberty—we ought to use that very sparingly. And we ought to use the criminal law in a way that is consistent with people's underlying moral beliefs and values.

That's important because ultimately people obey the law not so much because they're afraid of the sanctions that might accrue if they violate the law, but because they think it's the right thing to do. And we've seen repeatedly that when we try to use criminal law, try to apply it to cases where people don't have that kind of confidence in the legitimacy of law, that the law's weakened.

So one only needs to think of drug crimes, for example, where lots of people don't really think that there's anything morally wrong with using certain kinds of illegal drugs, and they don't support the legal regime in place, and the law begins to break down: people lose confidence in it, people lose a sense of the legitimacy of the law.

So it seems like something similar has happened in the case of downloading illegal—of illegal downloads from the Internet, for example, where especially young people really have very serious reservations about the need to comply with these laws. Kids who would never think of walking into a book store or a DVD store, if there is such a thing anymore, and taking tangible property off the shelf, are much less likely or less inclined to be reluctant to make illegal downloads from the Internet.

CHRISTIAN BARRY: So, two things then. One issue that this raises of course is that insofar as they are nonexclude—this is not appropriating something so that no one—so it has no value for somebody, but it can diminish the value of a thing—

STUART GREEN: Right.

CHRISTIAN BARRY: —to that person, which has bad effects both on that person and also in terms of its incentives. It seems that these types of cases are like tragedy of the commons cases, or they're cases where each individual act doesn't seem particularly harmful or wrong, yet collectively it may have very significant effects.

Is it, in your view, that civil law is simply adequate to dealing with these sorts of problems, or if it turned out to be the case that there would be rather significant problems with incentivizing the creation of certain types of products unless they were criminalized, would you think that that would still be disproportionate, or would it be something that you would consider?

STUART GREEN: Intellectual property has a whole palette of remedies that it might employ. And we could employ civil sanctions of various sorts, private actions, government actions, that are brought civilly, that don't entail the possibility of criminal actions. And in the most serious cases we could employ criminal prosecutions.

And of course there are a whole range of technological approaches to dealing with thefts of any sort. So when cowboys in the old West were worried about having their cattle stolen, they put up barbed wire. They invented barbed wire and used that as a technological solution to a problem that the law wasn't particularly effective in dealing with: cattle rustling.

So obviously there are technological approaches to dealing with illegal downloads and other forms of misappropriation of intellectual property. Of course, the problem is that the hackers and the intellectual property thieves will always try to get around the technological fixes there are. But in terms of civil wrongs, there's no reason why we couldn't continue to try to apply civil remedies to some of these cases rather than resorting to criminal law.

So the problem of the tragedy of the commons is that you have many, many infringers, all of whom are infringing in a de minimis manner. It's always a problem from an economic perspective. But the criminal law is not necessarily, or probably not, the best approach to dealing with tragedies of the commons.

The criminal law is a very—works with a heavy hand. It imposes the potential of depriving people of their liberty. And when people have only contributed to the tragedy of the commons in a minor way, the idea that we might employ the criminal law holds out the prospect that we would have to criminalize a vast number of people.

So if there are thousands of people who are making illegal downloads, if we're really serious about the criminal law and we're going to employ it in a fair and equitable manner, we would have to consider the prospect of prosecuting thousands of people, all of whom have, say, downloaded a single song from the Internet or a single film or whatever it is.

That, I think, would be an overuse of the criminal law. That would really use up tremendous resources and would arguably have an effect of diluting the value of the criminal sanction, which we ought to use for only the most serious kinds of anti-social behavior.

CHRISTIAN BARRY: So it was interesting that you mentioned this connection between legitimacy of the law and the degree to which it cohered with people's considered convictions about proportionality and what was a just remedy for different types of conduct. But I wonder with respect to intellectual property whether even civil—treating it as a civil wrong—isn't

already—or at least a civil wrong where significant types of financial rewards could be given, or—isn't that also out of touch with what many people actually believe about this?

That is, anything above perhaps charging something what they would rightfully had to have paid if they had appropriated it lawfully, seems to many people to be excessive. How would you view the civil law in relation to these types of conduct?

STUART GREEN: Right, so I think that's correct, even bringing civil suits seems to be kind of inefficient and overkill perhaps. It's costly to bring civil suit, and it may have the effect of overdetering socially responsible behavior.

So if everyone's afraid that if they are using the Internet in a creative way—say you have an aggregating site where you're linking up other Internet sites—but you're afraid that you might be incurring criminal liability, which is a potential that arose recently in the United States in connection with proposed PIPA and SOPA legislation, both which would have had the effect of subjecting various blogs and aggregating websites to the potential of, if not criminal penalties, then at least civil remedies. That's very costly; it has a chilling effect on behavior that is probably good for society.

So I'm not suggesting that, you know, we ought to start bringing civil suits against everyone who brings an illegal download. I think that intellectual property law is—can only go part of the way. I think we need to find technological solutions. We need to create normative changes that people respect other people's intellectual property, and they understand that people work hard to create movies and music and so forth. And we may be going through a paradigm shift, in which people are viewing the creation of intellectual property differently from how they have in the past.

To use the criminal sanction to go against intellectual property violations is probably even more of overkill than to use the civil sanctions, which themselves may constitute overkill.

So I'm not suggesting that we should bring civil suits as a regular matter of course. There may be cases where you can find particular websites—for example, there's a company called Megaupload that's recently been subject to both criminal prosecution and civil suits for providing the means for people to make illegal downloads.

And that—it may be appropriate to go after the biggest facilitators. But to go after individuals who are engaged in this kind of behavior is probably overkill, whether it's criminal or civil prosecutions.

CHRISTIAN BARRY: So one of the points you've been making in your work, including your recent book, is the idea that theft as a concept is really an amalgam of various different ideas. Now, so far we've been discussing intangible property and the appropriation of, or misappropriation of, intangible property, and whether or not it should be conceived as a part of theft. But are there other aspects of theft law now that you also think are both out of touch with people's considered convictions about what should be part of the criminal law, and that need to be sort of distinguished and separated out in this way?

STUART GREEN: Yeah, well, the first thing to say is that theft has been very much undertheorized in recent years. There's quite little writing on it, which always makes an author nervous—if there's no writing that may suggest that there's no reason to write about it.

But I don't—I think there is a good reason to write about theft and I think there's a lot interesting in it.

The idea that intellectual property and other intangibles should be treated as just another form of property such as theft is part of a larger phenomenon, which has generally been called the consolidation of theft law. And the basic idea is that in the 19th century and before, theft law consisted of a sort of ad hoc collection of specific theft offenses and specific kinds of property that were subject to theft.

So we had specific offense like embezzlement and false pretences and larceny and so forth, each of which had its own specific rules and definitions and potentially punishments. And different forms of property, whether it was intangible property or services or intangibles, were either subject to specific regimes within theft law or were outside the scope of theft law entirely.

And then in the early 20th century, especially in the U.S. Model Penal Code and the English Theft Act, we saw an attempt to try to bring theft law together under one tent and get rid of the ad hoc and inconsistent approaches and to treat all deprivations of property as a single phenomenon.

It didn't matter how theft was committed, it didn't matter what the form of property was that was being undermined, we were going to treat it all as a form of theft. And there were some practical issues that were solved by that. Some of the inconsistencies that were found were fixed by the consolidation of theft law.

But at the same time, I think we went too far in terms of consolidation; we sort of threw out the baby with the bath water in consolidating theft law in this manner and creating just a single consolidating form of theft which didn't take account of people's deeply felt intuitions and long-felt intuitions that there is a difference, a moral difference, based on how you commit theft. Whether you trick someone out of his property or take it by gunpoint or sneak into his basement while he's out and take his property: that those distinctions matter.

And also that the kinds of property that's taken, whether it's a service or a tangible good or an intangible good, that those distinctions matter as well. And also that in the effort to solve some of the procedural issues that arose in earlier law, I think we've lost some of the rich moral character of theft law, that we ought to try to restore.

CHRISTIAN BARRY: We're going to take brief break and we'll be back with more with Stuart Green on theft, intellectual property law.

MATT PETERSON: You're listening to Public Ethics Radio. Christian is speaking to Stuart Green of Rutgers University.

CHRISTIAN BARRY: So insofar as theft law, this movement in law in both the Commonwealth countries and the United States, had this effect of trying to bring together these disparate types of activity under one concept, with differentiated but somewhat similar sanctions, and also that it was under criminal law—you mentioned that it was throwing the baby out with the bath water.

And we've been talking about intangible property as one example of a type of conduct—that the appropriation of intangible property is one type of conduct which seems to have been unfortunately swept up in this. But what are some of the other areas, and more importantly, what should the criteria be when we're trying to look at which forms of appropriation should be treated as matters of criminal law, as matters of civil law, or perhaps simply not as matters of law at all but simply something that needs to—even insofar as it's a unjust appropriation—simply is not the business of the law?

STUART GREEN: So one of the characteristics of this consolidation is that a very broad range of conduct was brought under this single tent, if you will, of theft law. And a really wide range of behaviors, some of which are quite wrongful and others of which are only marginally wrongful, if at all, and may well be in some respects socially acceptable, if nevertheless aggressive, kinds of behaviors. And if you just throw a single tent over all that, there's a real danger that you're going to be overapplying the criminal law, that you're going to be overcriminalizing.

So we need to really look at specific cases on a specific basis. We need to look carefully and see what has been the effect of consolidation and what kinds of conduct have been brought under that tent of theft law and ask whether they really should be there, or if there are lines that we can draw that would exclude certain kinds of behavior from the heavy hand of the criminal law.

So to give some examples, people threaten other people in various contexts. Think about people in a negotiation who are essentially using coercive kinds of techniques, that unless you give me what I want I'm not going to make the deal with you, I'm not going to, you know, I won't go any higher than X amount, and so forth. Behavior that is coercive or aggressive and in some cases is under a very broad definition of blackmail or extortion might actually potentially subject someone who's engaged in that kind of behavior to criminal penalties.

So we need to find ways to distinguish between those kinds of misappropriations of property which do qualify as theft and ought to be treated as a crime and those which may simply be civil wrongs or perhaps fall outside the scope of law entirely. So to take an example, if you find property, in most Anglo-American jurisdictions, for example, if you find property you have an obligation to return it or at least try to find the owner of the property. And if you fail to do so then you might potentially subject yourself to criminal penalties.

Under modern English and American law, that failure to return lost property or misdelivered property is going to be treated as an equivalent to other kinds of theft, even though you haven't actually dispossessed the owner of the property from his or her property. You've merely, arguably in some cases, delayed or made it difficult for the person to recover his or her property.

So imagine that somebody loses a wallet in a train station. And a person finds it. If the person can easily identify the owner of the property—in the case of a wallet it should be relatively easy to do that—then the person has an obligation to return the property, try to find the owner, and if he fails to do so would be treated as a thief.

Now that may be the sort of worst case scenario, and perhaps it's appropriate to treat that as a form of theft. But there will be other cases where someone comes into possession of property,

say property is misdelivered to your house, say the former tenants have moved out and they haven't had their mail forwarded. The mail keeps coming to you every day; it's piling up in your house.

Under the law of theft that applies in most Anglo-American jurisdictions, you could potentially be charged with theft because you haven't made an effort to try to return the property to its rightful owner. Now that strikes me as a pretty heavy-handed use of the law.

Perhaps a better approach would be to give people positive incentives, a carrot if you will, rather than—to return to the property, rather than to apply the heavy hand of criminal law and potentially subject the person to theft.

Now, if you threaten to prosecute people for theft for failing to return the found property, you could do that, but the question is whether that behavior really is morally equivalent to somebody who actually picks the pocket and takes the wallet in the first place.

CHRISTIAN BARRY: So one of the things you've been appealing to in discussing what types of conduct should be criminalized and what shouldn't be and the degree of criminal sanction that should attach to different types of conduct has to do with the degree to which it accords with ordinary people's moral sense of what's important or how bad this conduct is. And I wonder if you could say something about why we shouldn't apply that, if we shouldn't apply that, also even within what is thought of as types of conduct which are paradigmatically criminalized.

So, the taking of tangible property. In one case my taking of tangible property might make you very badly off, and it may not do very much for me—I'm already well-off. In another case I may be very badly off and you're very well-off such that you don't even notice that the thing that I've taken from you has been taken. Nevertheless these two types of conduct are criminalized and are treated as the same under the law.

But we're appealing to the sort of moral appropriateness of these sorts of sanctions, shouldn't we move to a more differentiated picture of theft, even of tangibles?

STUART GREEN: Right. So like all victim-based crime, the wrongfulness and the harm of a given criminal act, the token we can say of crime, is going to have a specific effect and a specific moral weight to it. So if you happen to steal the painting on my wall which has images of my wife's great grandparents, who were immigrants, immigrants from Germany to the United States, and it has tremendous sentimental value to her and her family. If you took that from me, even though the dollar value of the painting is relatively modest, it would have a great impact.

We would much rather have you steal that than maybe some of the more valuable, in terms of market value, paintings that we have on the wall. And so that raises the question, well, should we take into account, in punishing and categorizing criminal offences and particularly theft, based on the precise effect that it has on the victim.

So to give another example, suppose that I'm very wealthy and you take my fifth back-up car, that I never use, it has very little impact on my life and my well-being, as opposed to taking, you know, the bicycle that I use in my impoverished state that I use to get to my modest job and to support my family and so forth.

You could say that the impact on the more vulnerable defendant is obviously much greater, other things being equal, than the effect of the affluent victim. So should the criminal law take account of that? Well, perhaps at some stage, perhaps at the sentencing stage those kinds of considerations might be relevant, particularly if we had evidence that the offender knew what impact it would have on the victim.

But at the level of fair labeling, at the level of categorization, I think it's dangerous to do that. Theft law, like all criminal law, is prospective in its application. So we need to legislate, decide what law is, how it's going to apply in the future to cases that we don't know the specifics of. So we need to legislate at some level of generality, and theft law is no different from other cases of criminal law.

I mean, there are limits to how finely graded we want to have a criminal law. I've argued that, well, we should distinguish between theft of tangibles and intangibles or theft of services, and other sorts of property on the one hand, or theft by deception versus theft as violent force versus theft by coercion or theft by stealth.

Well, those are morally relevant distinctions, which ought to be reflected in the way we legislate, that the specifics of the particular impact that a given theft has the victim, depending on how vulnerable the victim is and what level of wealth the victim has and so forth, or the sentimental value of the property, that those are probably beyond the scope of the actual legislation offences in that if they're going to be dealt with, if they're relevant, then they should be dealt with only at the level of punishment and sentencing.

CHRISTIAN BARRY: And, do you think that there are any lower limits that should be set, though? So, for example, some, you know, are there certain sorts of theft that just seem so insignificant that they shouldn't be criminalized?

STUART GREEN: So there is a problem of so-called de minimis theft. There are a couple of fairly comical cases from my own jurisdiction of New Jersey, involving, believe it or not, theft from a restaurant buffet bar, someone who walked away from Sunday brunch with a couple of extra bagels in his pocket. Or another case involving a child who stole bubblegum from a candy store.

And those offenders were prosecuted and made an argument that their thefts, though they admittedly happened, were so trivial, that the amount of property that they involved was so insignificant, that they ought to be beyond the reach of criminal law. And the problem of de minimis thefts is in some respects similar to the problem of downloading intangible property.

So if somebody walks into the Whole Foods store and takes an olive from the olive bar, then the effect on Whole Foods is quite small, we might say de minimis, but if everyone who walks into Whole Foods over the course of a week takes an olive from the olive bar then pretty soon the store's going to be out of olives. So there's a kind of aggregate effect there, maybe a tragedy of the commons we might call it, the question is how the criminal law should respond to that.

Again, we have to consider the fact that criminal law involves very significant externalities. It's very costly to investigate, prosecute, convict, and ultimately incarcerate criminal defendants. We don't want to overuse that sanction. So one possibility would be to allow

judges, on a case-by-case basis, and hopefully prosecutors, to decide on a case-by-case basis, what kinds of cases are worth prosecuting.

In the case of shoplifting for example, which in its aggregate is a huge problem for businesses around the world, creates tremendous cost, some systems, some authorities have decided that minor cases of shoplifting really are much better dealt with on an individual, civil law basis, or nonlegal basis, rather than using criminal law.

So for example the Walmart company in the United States has a policy which says that if people steal property that's worth less than say 50 dollars from one of their stores, they won't report it to the police, because they say it's not worth it to them to have their employees be tied up speaking to the police, being interviewed, possibly having to go down to court to testify against a criminal defendant.

So there's a kind of decision by a lot of shop owners that they would rather not have to bring in the criminal law in those kinds of cases. And there's a kind of private justice, if you will, that store owners are able to achieve.

In some stores—it's a practice in China, for example—that someone who is caught as a shoplifter in a store, the person's picture will be taken and the person's image will be put up somewhere on the wall of the store and there's a kind of shame sanction that a store achieves but without the intervention of the state, of state prosecutors, or the possibility that somebody would be criminally prosecuted.

By the same token we don't want to say that there's any low level beyond which, or below which, we won't use the criminal law. Because that creates a kind of perverse incentive, creates a kind of license to steal. So we almost inject a sort of level of uncertainty into the system: we don't announce that people who steal very small amounts of property will never be subject to criminal sanctions, but we kind of leave that up to the system to work out on a case-by-case basis.

CHRISTIAN BARRY: Well, one of the interesting things that is coming up in this discussion is in deciding whether to criminalize—and this gets to the core of different theories of criminal law—different sets of considerations play a role. Some of which have to do with blameworthiness, which is most naturally associated with retributivism as a doctrine of what criminal sanction is about, and also the prospective effects of these types of things.

From what I gather you sort of take both of them to be important, but in what way are they sort of supposed to interplay? Is it there's sort of some sort of de minimis condition in terms of that it has to be minimally blameworthy, and then once it reaches that threshold the prospective effects can lead us to make something quite criminally sanctionable? Or is it more complex than that?

How do you conceive of how we should weigh these two different types of considerations in deciding whether or not to criminalize?

STUART GREEN: So the question of why we criminalize and how we justify criminalization and punishment is, of course, one of the persistent and overwhelming issues in criminal law theory and punishment theory. And my take on it is that we should subscribe to something like what's loosely been described as a hybrid theory, which says that we

criminalize because the criminal law does deter, in some cases, harmful and wrongful behavior. But that we should never do so unless the actor who engages in the conduct has been blameworthy.

So, to put it another way, I think of retributive goals of criminal law as being a negative constraint, that we should never impose criminal punishment on someone who's not blameworthy, but, at the same time, I think that we have to look prospectively, at the purposes of what criminal law does for society. And merely posing retribution is a necessary, but not I think a sufficient, condition for punishment; that we ought to think about the effects that a given criminal sanction has on deterring criminality.

Now, sometimes it's very hard to determine whether the criminal sanction will actually deter or not. We really have a big debate about that as an empirical matter. And, of course, a lot of criminal behavior is impulsive and not deliberate. And the idea that we're really deterring lots of criminal behavior, I think, has been seriously questioned.

Interestingly, property offenses are probably—make a better case for deterrence theory than other forms of criminal behavior. So to the extent that the people who are engaging in property crimes are doing so because they have a specific goal in mind of obtaining property, perhaps because they are deprived of property themselves and might view the criminal law as a way to improve their well-being, those are exactly the kinds of offenders who might make a considered judgment about the probability of being caught is, what the likelihood of being punished and how much they're likely to be punished.

So if deterrence plays a role anywhere in criminal law, it's probably—there's a strong case for its being relevant in the case of property crimes and theft crimes in particular. So people who are making a judgment about whether it's worth committing burglary or robbery or fraud of some sort are exactly the kinds of offenders who are likely make those kinds of judgments.

So deterrence is very much relevant, but, at the same time, it's incumbent on us to think about blameworthiness as a constraint, as a side constraint—

CHRISTIAN BARRY: And the extent of blameworthiness, not just—

STUART GREEN: And the extent of blameworthiness, right. And if we're punishing people disproportionately to their level of blame, then we're really misusing the criminal law and ultimately abusing the criminal law.

CHRISTIAN BARRY: Stuart Green, thanks for joining us on Public Ethics Radio.

STUART GREEN: Thank you.

MATT PETERSON: Thanks for listening to Public Ethics Radio. The show is produced by me, Matt Peterson, and Barbara Clare. Christian Barry is our host. The show is supported by the Centre for Moral, Social, and Political Theory at the Australian National University and the Carnegie Council for Ethics in International Affairs.

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